

Daver Engineering (P) Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-1985

Reported in : (1985)(5)LC2172Tri(Delhi)

Appellant : Daver Engineering (P) Ltd.

Respondent : Collector of Customs

Judgement :

1. This is a matter in which revision application was filed to the Government of India against Order-in-Appeal No. S/49-1422/78R, dated 24-10-1978, passed by Collector of Customs (Appeals), Bombay. It has been transferred to the Tribunal and is now being dealt with as an appeal.
2. Shri F. Taleyar Khan, Advocate, has appeared on behalf of the appellant and Shri S.C. Rohatgi, J.D.R., on behalf of the respondent.
3. Briefly, the facts of the case are that the appellants imported goods described as "components for the manufacture of Vari Pitch Sheave Stepless Spindle Speed Regulator for Ring Spinning Frame". These were assessed at a concessional rate of duty under Notification No.350-Cus/76. According to the Department, this was done on the assumption that these were component parts of Ring Spinning Frame falling under 84.63-C.T.A. and that such Ring Spinning Frames were being manufactured by the appellants utilising these imported parts as components. Subsequently, the department observed that the appellants were not manufacturers of Ring Spinning Frames and came to the conclusion that the

goods did not qualify for assessment under Notification No. 350-Cus/76 but were assessable, on merits, under Heading 84.63-CTA. The department's stand was that the components imported were only for the manufacture of "Vari Pitch Sheave Stepless Spindle Speed Regulator" and not for manufacture of Ring Spinning Frame and, therefore, they did not qualify for concessional assessment under proviso to Notification No. 350-Cus/76.

4. On behalf of the appellants, it is urged that the Appellate authority failed to give the appellants adequate opportunity to present the evidence in support of their case. It is stated that a personal hearing was not granted to the appellants, adding that the Appellate authority had not seen the parts in question. It is contended that because of this, the Appellate Collector could not be in a position to determine the correct classification of goods.

5. The appellants state that the department has erred in classifying the goods under Heading 84.63 of CTA 75, which includes simple Pulleys, Drums (wide Pulleys), stepped pulleys, etc. According to them, they have imported components for Vari Pitch Sheave Stepless Spindle Speed Regulators, which fall under 84.38 and not 84.63. It is submitted that these components are not Pulleys of any kind whatsoever.

6. It is further stated on behalf of the appellants that not only the Textile Commissioner's Office and the Joint Chief Controller of Imports and Exports, Bombay, but even the Customs themselves had earlier admitted their claim to classification under 84.38(1) and considered them entitled to the benefit of Notification No. 350-Cus/76.

7. Appellants have especially emphasised that their product VPS Step-less Spindle Speed Regulator is exclusively and specifically designed, patented and used solely and principally for Textile Ring Spinning Frame only and that it cannot be used anywhere else.

Certificates have been produced from various manufacturers of such Ring Spinning Frames to support this contention.

8. Appellants have also emphasised that the department has not challenged the fact of exclusive use of their Regulators in Ring Spinning Frame. In this connection, they have cited the decision of the Supreme Court in Siemen's case (AIR 1976 S.C. 1785).

9. Appellants have stated that they claim that the goods imported by them should fall for assessment under Item 84.38(1) as accessories of Ring Frame, an item which would fall for assessment under Item 84.36-CTA.10. It has also been especially emphasised on behalf of the appellants that they are not making just the Vari Pitch Sheave but the entire Regulator consisting of the following components :- It is urged that, by itself, the Sheave cannot function as a Spindle Speed Regulator for Ring Spinning Frame. It is pointed out that the Time Selector sends a signal to S.S. Controller, which activates the motor in the S.S. Controller which controls speed of the Ring Spinning Frame in a pre-determined manner through the Sheave. This Regulator, it is pointed out, is not a Pulley, as held by the Customs authority.

11. On behalf of the respondents, it has been pointed out that the items imported are nothing but components of "Vari Pitch Sheave". These include shafts, end sheaves, intermediate sheaves, Cams, Sleeve, Slide, Keys, Holder and Roller. The respondents have filed before us photostat copies of extracts from Ken's Mechanical Engineering Hand Book and have made the point that the parts imported are really parts of variable Pitch Pulleys.

12. Our attention was especially drawn to Section Note 2 to Section XVI of CCCN, dealing with parts. It is emphasised that in so far as parts which, in themselves, constitute an article covered by a heading of this Section (other than the Headings 84.65 and 85.28) are concerned, as per the Section Note, these, in all cases, are to be classified in their own appropriate heading even if specially designed to work as part of a larger machine. It has been clarified that this applies, in particular, to, apart from other items, Pulleys and Pulley Blocks.

13. Dealing with the nature of the item manufactured by the importers, namely Sheave, Shri S.C. Rohatgi, learned JDR, has submitted before us an extract of the meaning of the term "Sheave", which is as follows:- "Sheave (Engg.) Grooved

Pulley for use with Wee Belts, Ropes or Round Belts." 14. Dealing with the argument of the appellants as regards advice of the Textile Commissioner's Office and that of the Joint Chief Controller of Imports and Exports in the matter of classification of the goods imported, Shri Rohatgi has referred to CEGAT decision in the case of Photovisual, Calcutta v. Collector of Customs, Calcutta 1984 (17) E.L.T. 443, in which it was held that the question whether the particular imported machinery would attract duty or not was a matter to be decided by the Customs authority and that any letter obtained from another Ministry recommending concessional assessment would not help in proceeding relating to Customs classification.

15. It has also been brought to our notice, on behalf of the department, that in view of the fact that Notification No. 350-Cus/76, dated 2nd August, 1976, did not cover parts of VPS Stepless Spindle Speed Regulator, which were classifiable under 84.63, a separate Notification was issued by the Government on the representation of the appellants to cover these goods. This was Notification No. 138-Cus/79, dated 27-6-1979. On a query from the Bench, the appellants accepted that they had taken up the matter of exemption of such goods separately with the Government and, as a result, the Government had issued this Notification. The appellants have stated that this fact should not prevent them from claiming classification of their goods under Notification No. 350-Cus/76, dated 2-8-1976, if the relevant Notification, on merits, could be found to afford cover for their goods.

16. We have carefully considered the facts of the case and the submissions made before us. In so far as the appellants' contention regarding failure of the Appellate authority to grant a personal hearing is concerned, they have not argued before us for remand of the matter for de novo decision at the level of the Appellate Collector. On the other hand, we have heard them at length and they have argued fully before us on merits. In view of this, after these proceedings before us, they can have no complaint that they have not got an opportunity fully to represent their case for a decision in the matter.

17. As regards the submission made by the department regarding the issue of Notification No. 138-Cus., dated 27-6-1979, on the representation of the

appellants, with a view specifically to afford relief to the impugned goods, it does, strain logic for the appellants to argue that they are already covered by Notification No. 350-Cus/76, dated 2nd August, 1976, when they have separately represented before the department that they are not so covered and requested for issue of specific exemption Notification for their goods, which was separately issued. We agree, however, with the submission of the appellants that if they had sought the issue of a separate notification, by way of abundant caution, this should not prevent them from seeking the benefit of dispensation against an existing notification if considered available on examination, on merits.

18. We have, in this case, referred to the decision of the Supreme Court in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. the Union of India and Anr. AIR 1976 S.C. 1785, which has been cited in support of their case by the appellants. We find that in this case it was held by the Supreme Court that pot motors imported by the appellants, which were clearly component parts of rayon spinning machine and were especially designed for use in spinning frame for manufacturing rayon thread and, for that purpose, given special shape and quality, which was not only not essential for their use for another purpose but actually rendered them incapable of being used for any other purpose, were classifiable under Item 72(3) I.C.T. It was held that as against 73(21), which was a general item, these goods were appropriately classifiable under Item 72(3) which covered component parts of machinery, defined in Item Nos. 72(1) and 72(2) which were not otherwise specified. This case has been cited by the appellants in their favour, stating that since their goods were meant exclusively for use in the manufacture of regulators, which admittedly were meant for use in spinning frames. Therefore, they should be entitled to the classification, as claimed by them. The matter before the Supreme Court, in this case, was in an entirely different context and related to a decision as regards more appropriate classification as between ICT 72(3) and 72(21). Here, we have for consideration alternative classification in an entirely different context and in respect of different tariff items. Nor is any support available as regards the concept of "specially designed for use" because the whole case of the department rests on the fact that the parts imported are not for use in the spinning frames but in the manufacture of regulators, which are nothing more than pulleys.

19. We have given our best attention to this basic issue. In this connection, we were interested to observe that the appellants, in the course of their arguments, dwelt at great length on the Installation and Service Manual, placed at page 58 of their Paper Book to identify and illustrate the nature and function of the product manufactured by them out of the impugned parts imported by them. We observe that the relevant booklet, which purports to be a manual for VPS Stepless Spindle Speed Regulator for Ring Spinning frame is illustrated on the very face of the booklet by a picture of the sheave, without any attachments. This lends support to the submission from the department's side that the regulator is nothing but a sheave. It has been, of course, claimed by the appellants that there are other components of the regulator, such as the S.S. Controller, the tension equipment and the time selector/Cam Mechanism. However, they have not been able to carry any conviction with us that the other attachments do not merely subserve the nature and essential function of the product as a sheave.

20. It may be added here that by reference to the technical literature placed before us, both by the appellants and the respondent, we are also satisfied that VPS Stepless Spindle Speed Regulator is nothing but a pulley mechanism in which diameters of sheaves are varied to get different speeds.

21. Having come to this finding as to the nature of the product manufactured from the components imported, the question to be decided is whether the components would merit classification on the basis of the regulator which is manufactured from them or on the basis of the fact that these regulators are ultimately used in ring spinning frames.

It is here that the argument from the department cited regarding interpretative Rule 1 in Part III of the First Schedule of the Import Tariff and Note 2(b) to Section XVI of the Import Tariff, become relevant. It is noted that as per interpretative Rule 1, the titles of sections and chapters are provided for ease of reference only and, for legal purposes, classification is to be determined according to the terms of the headings and any relative section or chapter notes. As per Note 2(a) to Section XVI, goods of a kind described in any of the headings of Chapters 84-85 (other than heading Nos. 84.65 and 85.28) are in all cases to be classified in their

respective heads. As per Note 2(b), other parts, if suitable for use solely or principally with a particular kind of machine or with a number of machines falling within the same heading, are to be classified with the machine of that kind. Our attention, in this connection, has been drawn to Explanatory Notes of CCCN with reference to Section Note 2 dealing with parts. It is pointed out that, as per these explanatory notes, it is clear that pulleys and pulley blocks are in all cases to be classified in their own appropriate heading, even if specially designed to work as a part of a larger machine.

22. In the light of the foregoing analysis, we hold that the correct classification of the VPS Spindle Speed Regulator is under Heading 84.63, Customs Tariff Act and that the benefit of concessional assessment under Notification No. 350-Cus/76, dated 2nd August, 1976, cannot be extended to the parts imported for their manufacture.

23. In result, the order of the Appellate Collector is upheld and the appeal is dismissed.

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